App. F. IX-4

*Previous References*

1928. Loose )

File No. 11-28

Serial Nos.

Fl. 15-3 B (1-4)
28-3/4/1-2

# General and Revenue Secretariat.

*Serial Nos.* Two

**Part B for** August 1928.

SUBJECT

Re communal liability of master for ex-police servants for committing offences under Forest Regulation as in Excise Re

No P. 95399-8.28 To see Chief Commissioner's letter

States that the Excise Regulations stands on a different footing and the exceptional provision made in section 6(2) for the purpose of that Regulation cannot be regarded as furnishing an analogy for amending the Forest Rules on the

GENERAL AND REVENUE SECRETARIAT.

NOTES.

File No. 11

FILE HEADING.

Criminal Liability of master for the acts of his servants for commitg offences under forest Regulation

FROM

The chief Conservator of Forests-

No. $D_3$ 3197-27 Dated 30-7-28 Received 31-7-28

| Diary No. 529/P of 28 | Enclos. 2 | Spare copies | Serial No. |
|---|---|---|---|

BRIEF ABSTRACT OF LETTER.

States that in C.C. 52 of 27-28 on the file of the Spl II class magistrate Tumkur, the accused was acquitted of the offence under sec 24(a) of the Forest Regulation though it was admitted that his servant had allowed illicit browsing of 50 goats on the ground that a master is not Criminally liable for the acts of his servant. Requests provision to be made as in Kiln Regulation sec 64.

NOTES AND ORDERS.

Accused Lingappa was charged before the Spl II class magistrate Tumkur under sec 24(a) of the Forest Regulation for having allowed illicit browsing of 80 goats in Amrasandra State Forest on 22-6-1927. He was tried in C.C. 52 of 27-28 and though the magistrate found as the fact the illicit

General and Revenue Secretariat.

Law File No. 11 of 1925

Serial No.

browsing proved, he acquitted the accused on the ground that since it was his cowboy that had allowed such browsing, the master cannot be held criminally liable for deeds of his servant.

The D.F.O. suggests that a provision similar to Sec 64 of the Excise Regulation may be made in the Forest Regulation -

The Chief Conservator requests the opinion of the Law Secretary as to the best safeguards to be provided for to get such cases end in conviction.

Mop -

1/8/25

A.P. 7/8.

The case referred to ended as it did on account of the Dept. ~~prosecutor~~ prosecuting the owner of the goats instead of his servant who actually grazed them in the State forest, without ever letting in any evidence as to the responsibility of the former apart from the fact that he was the owner of the goats. The result of the prosecution was thus due to the mishandling of the case and no legislation for the purpose of securing conviction in cases of this kind seems called for. The Excise Regulation stands on a different footing and the exceptional provision made in S. 64 for the purpose

WD 01714—GPB—80,000—18-4-23

General and Revenue Secretariat.

File No. H of 1926.

Serial No.

of that Regulation cannot be regarded as furnishing an analogy for amending the Forest Regulation on the same lines

Secy
2/8

I agree. Rejs
8/
6/8
Draft
2/
6/8

Draft submitted
Secy
7.8.28
7/8

2 To The Chief Conservator of Forests
No. 953 dt 9-8-28.

I take that the excise Regn stands on a different footing & the exceptional provision made in section 64 for the purpose of that Regn cannot be regarded as furnishing an analogy for amending the Forest Regn mutatis mutandis.

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

529
P 828

Chief

OFFICE OF THE CONSERVATOR OF FORESTS IN MYSORE.

Tel. Address.
"Forestcon"

*Dated Bangalore,* 30-7- *192* 8

No. 93-3197-11
E.1

Law II-28-1

FROM

B. V. RAMAIENGAR, ESQ., B.A.,
Chief *Conservator of Forests in Mysore.*

To

B. NAGAPPA, Esq., Bar-at-Law.,
Legal Remembrancer and Law Secretary
to the Government of H.H. the Maharaja
of Mysore, Bangalore.

SIR,

I have the honour to forward herewith for favour of opinion, a copy of Tumkur District Forest Officer's letter No. 1014 dated 1-6-1928 together with its enclosure (in original) relating to on the Forest Case (No.162/42 of 1926-27) tried and disposed off by the Special II Class Magistrate, Tumkur, in C.C. No.52/27-28, and to state that the trying Magistrate has acquitted accused Lingappa who was charged for having allowed illicit browsing of 50 goats in Ankasandre State Forest on 22-6-1927, on the ground that a master is not criminally responsible for the acts of his servants. I am further to state that the accused admitted his guilt (acts of his cowboy) as his own and offered to have the case compounded departmentally but failed to do so. There is also the Magistrates finding" that there is no doubt that the accused's goats were pastured in the State Forest "

The Vllagers usually send their cattle for grazing with common herdsman or with their own servants or boys as the case may be and these intentionally or not allow their cattle to graze in prohibited areas. The only weapon that lies with the Forest Department is to drive the cattle to cattle pounds. No action can be taken against the master of the Cowboys for the damage done to the standing growth and if taken, it is apt to end in acquittal under the safety clause of master not being responsible for the acts of his employees. With a view to have

absolutely necessary that some remedial measures should be adopted. In these circumstances I request you to be so good as to kindly favour me with an expression of your views as to the best safeguards to be provided for to get such cases end in connection.

I have the honour to be,

Sir,

Your most obedient servant,

B. V. Ramamurti

Chief Conservator of Forests.

25-7

Copy of letter No.1014 dated 1-6-1928, from the District Forest Officer, Tumkur, to the Chief Conservator of Forests in Mysore.

In submitting herewith a copy of the Judgment passed by the Special IInd Class Magistrate, Tumkur, in C. C. No. 52 of 1927-28/ (Forest Case No. 162/42 of 26-27) of the old Chikkanaykanhalli Range, in which one Lingappa son of Chickamadd Naika aged 45, resinding at Revanal ~~way~~ village charged for having allowed illicit browzing of 50 goats in Ankasandra State Forest on 22nd June 1927.

2. The facts of the case are: On the evening of 22-6-1927 50 goats belonging to the accused were found browsing in Ankasandra State Forest without permit. The goats were seized by the Range Officer (Mr. B. V. Narasimhaiengar and Guards Kempa Rama and Giri Dasi. The Mahazar was drawn up. On the 23rd morning the accused who appeared before the Range Officer, admitting his guilt, offered to have the cases compounded departmentally for Rs.50/- at Rs.1-0-0 per goat and one Kambe Gowda stood as surity. The case was compounded for Rs.50/- but as the party failed to remit the compensation amount within 30 days, inspite of several notices issued by the Range Officer, the Range Officer filed the case in the Court for trial as per para 5 of Government Order No.661-8-65-37-42 dated 24th April 1903.

3. The case was successfully proved by the prosecution. The trying Magistrate has also expressed in his Judgment "that there is no doubt that the accused's goats were pastured in the State Forest" But the accused pleaded not guilty before the Magistrate stating that his boy who was leading the goats that day was only grazing them in the District Forests.

4. The trying Magistrate has stated in his Judgment that the accused did not himself brouze the goats in the State Forest and the Master is not criminally responsible for the acts of his servant &c., and acquitted the accused on the ground as there is no provision in the Mysore Forest Regulation for holding the master responsible for such acts of his servants as there is for instance in Section 64 of the Mysore Excise Regulation.

5. In this connection I beg to bring to your kind notice that the villagers usually send their cattle for grazing with a common herds' man or with their own servants or boys as the case may be. Whenever any offensive act is committed, the owners will come forward and admit the guilt of such servant etc., as their own. In the present instance the accused's boy was browzing the goats in the State Forest without license and the case was detected by the Range Officer himself on the evening of the 22nd June 1927. The cattle ~~were~~ was seized and the occused who appeared thereafter admitted guilt as his own and offered to have the case compounded volunteerily. If such clear cases end in acquital, I doubt that ~~all most~~ almost all the Forest cases, if they are taken to Court, will meet the same fate because usually the herds of most of the villages are ~~by~~ tended by the boys and the owners scareely follow their cattle.

6. I therefore request that as provided in Section 64 of Excise Regulation, an express provision for holding the master responsible for the acts of his servant, etc., may be made in the Mysore Forest Regulation also.

7. The faults of the Range Officer in the case in question are that he has not included the name of the boy who found browzing the goats and failed to take cash security from the accused, evern though he has taken personal security. There is no provision in the Mysore Forest Regulation to take any steps against such security As such the Range Officer is responsible for the recovery of the compensation amount which he recommended to be fixed.

Solicit the favour of passing such orders as the Chief Conservator may deem fit in the matter.

Chief Conservator of Forests.

less our commission to the account of the Mysore Government On the invoices will be printed the following 'Please pay our Bankers Messrs. Coutts & Co.' so that the buyers will issue crossed cheques to Messrs. Coutts and nobody else. Whoever may represent Essenflour here. Even I or you if and when we are here has no chance to handle the sales realisations and that is a very great advantage." Again in his letter Exh.P.66 dated 6-9-23 Mr.Sitharamachar wrote to Mr.Vardhamania that Messrs. Coutts & Co. accepted the proposals. On 20-9-23 Mr.Vardhamania wired approval to the arrangements as per Exh.P.67 and confirmed it by his letter P.68 dated 26-9-23.

Notwithstanding the assurance of Mr.Sitharamachar in P.65 that no one will be allowed to handle sandal oil the moneys Mr.Vardhamania noticed that an invoice was made payable to Mr.Kavlankar and asked Mr.Sitharamachar to explain why in spite of his assurance he permitted Mr. Kavlankar to handle the moneys (vide Exh.P.72 dated 25-9-23). In his reply Exh P.73 dated 18-10-23 Mr.Sitharamachar replied that before arrangements were made with Coutts & Co. an obsolete invoice form was used and that he had since got new invoices forms printed containing the direction to buyers that they should pay the account only to Coutts & Co. London.

Messrs. Coutts & Co. raised some legal objections to act upon the instructions of Mr.Sitharamachar to transfer moneys from the agents' account to the Government account as such transfers technically amounted to operation on the agents' account for which Mr.Sitharamachar had no legal authority under the articles of association of the Essenflour Products Co. Thereupon the share-holders passed a resolution to this effect:

"All moneys, bills and notes relonging to the

the company shall be paid or deposited with the Company's bankers to an account to be opened in the name of the company, the company's bank account shall be kept with such bank or bankers and be operated upon by xx such person or persons as the Directors shall from time to time - - determine". vide Exn.P.80(a) & (b) and D.28(a) and (b).

The only other xxx point that remained to be attended to was authorising Messrs. Sitharamamanar and Mavlankar to transfer monies from the company's account to the Government account. About this Mr.Sitharamamanar wrote to Mr.Vardhamania in Exh.P.74 dated [illegible] as follows:-

"Instructions to transfer money mean operating and as Mr.Mavlankar is to issue such instructions when I am touring and on my return back to India, Mr.Mavlankar's name is also necessary. Please note that neither Mr.Mavlankar nor myself will operate on this account unless it be to issue - - instructions to transfer and this is made clear to Messrs Coutts & Co. You need not therefore hesitate to get the above xxx resolution passed as soon as you receive this letter."

The Directors passed the following resolution P.80(c) and D.27(c):-

"that Messrs. M.L.Vardhamania, Governing - Director, R.Sitharamamanar Managing Director and - - - Mr. [illegible].Mavlankar, correspondent, Hasanfleur Estate Co. Ltd. be authorised to operate on the banking account opened with Messrs. Coutts & Co.London." These resolutions were communicated to Messrs. [illegible].S.Mavlankar (P.81) and Messrs. Coutts & Co.P.82.

Then Mr.Vardhamania took objection to an accepted bill of Letters for a debt having remained in the name of Mr.Mavlankar and not of Coutts & Co. - - - Mr.Sitharamamanar explained the matter as follows in his letter Exn.P.84 dated 27-2-:

agency when Messrs. Coutts & Co. had not yet been approached by me to be our bankers. That is how the accepted draft was with Mavlankar. I shall see that your ideas are carried out and please do not worry about it."

All this correspondence established beyond doubt - - the main features regarding the banking arrangements namely that the accused guaranteed to the Essenflour Co. that Mavlankar would not handle sandal oil collections, that - Mavlankar would not keep accepted bills of customers with him and that Mavlankar would not operate on the agents' account except to transfer moneys. To the extent to which these - assurances are violated by Mavlankar with the consent or knowledge or ratification of Mr.Sitharamachar he is directly responsible for the 'irregularity.

Sale or Agency.

In this case it has been strenuously contended that the agreement Exh.14 does not create between the parties thereto the legal relationship of principal and agent as alleged by the Prosecution but that on the other hand it created the legal relationship of buyer and seller. This contention is set forth as follows in the written statement of the accused:

"Though the term 'agency' is used in the said agreement, the legal relationship between the Mysore Government and the Essenflour Products Co.Ltd has not been one of - principal and agent in the strict legal acceptation of the term".

"The relationship between the Mysore Government and the Essenflour is one of creditor and debtor". This - contention goes to the very root of the case and was argued with admirable ability by the learned Counsel for defence and has therefore to be dealt with at some length. It is an established principle of law that mere description of -

of the parties as principal and agent in the agreement does not decide their legal relationship which has on the other hand to be inferred from the conditions of the agreement. question therefore is whether there is any provision in the agreement which suggests a legal relationship other than what the document purports to create between the parties.

An 'agent's is defined in Section 182 of the Indian Contract Act to be a 'person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called the principal'? Sale is defined in Section 77 of the Indian Contract Act x to be "the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer. It has been argued in this case that the agreement embodies the characteristics of a sale in the following respects.

(i) Clause 4 holds the agent responsible to warehouse the oil and insure the stocks against all risks at the cost of the consignee who should also bear the cost of - distribution.

(ii) clause 7 holds the consignee liable to advertise the oil at his cost and to develope the market at his cost.

(iii) clause 8 gives the consignee the fullest discretion in the matter of fixing prices subject to a minimum price.

(iv) clause 9 holds the consignee responsible to effect satisfactory insurance of the oil at his cost against losses from all causes whatsoever.

(v) clause 10 holds the consignee liable for bad debts and given him the fullest discretion to allow credit to buyers at his risk - provided the consignee should remit such amounts within 6 months of the sale.

(vi) there is no privity of contract between the buyer and the Mysore Government as the principal was forei_ and undisclosed (Section 230 Indian Contract Act) and allowed

allowed the consignee to trade on his own account. Clause 9 of the agreement is a mere repition of clause 4 regarding the insurance of stocks against all risks whatsoever and it would be convenient to deal with these together. It is important to note that these two clauses do not cast upon the consignees the responsibility for losses from whatever cause such as act of God, the King's enemies etc. as is - endeavoured to make out. They cast a responsibility on the consignees only to insure the goods against all insurable risks. Herein the consignor only stipulates a condition to safeguard his property in the custody of the consignee and that is manifest right of every principal in respect of his property in the hands of the agent (Section 211 Indian Contract Act) and its illustration (d) ). The fact that such insurance and advertisement (clause 7) and distribution are stipulated to be done at the cost of the consignee merely shews that it is included in the commission and cannot x affect the legal relationship of principal and agent between them.

The only other clauses to which my attention has been called as suggesting the relationship of buyer and seller are clauses (8) about price and clause (10) about risk of bad debts and credit. It is important to remember that clause (8) stipulates that the property shall not be sold below the minimum price but that the consignee should obtain the best price possible above the said minimum. Clause 6 stipulates that the entire sale-proceeds less - commission and expenses is the property of Government . A direction that the property shall not be sold below a - minimum price is only a direction regarding the conduct of the agency within the meaning of Section 211 Indian Contract Act and does not transform the consignee into a purchaser from the consignor at the minimum price. On the other hand a sale of agency goods to a customer below the minimum price renders the sale wrongful as between the -

the principal and agent for which the agent is liable in damages. In 20 Bombay 633 & 12 Madras Law Journal 375 it has been held that the measure of damages is the actual loss which the principal has sustained and not the difference betw the price realised and the minimum price. Thus the restriction about minimum price does not from improving the status of the consignee to the principal only confirms his status to be one of an agent whose discretion is restricted in respect of the price. In Katiar's treatise on Agency this principle is stated as follows on the basis of the decisions in Exparte Bright L.R. 10 Ch. 566. Re Cheesborough Exparte Blackburn L.R.12 Eq. 358 and Babriel Vs. Churchill 1 K.B.499.

"Where the consignment is to receive the property of the consignor until it is sold and the consignee is directed not to sell below a certain price and to render account of sale to the consignor from time to time the transaction is one of agency and not sale." In 51 Ind. cases 373 it was held that where is no question of profit or loss to the agent in any sense and his only remuneration is commission than he is an agent and not an independent contractor

Clause 10 of the agreement again places a restriction on the credit to be allowed to buyers at a maximum of six months and makes the agent a surety for the moneys due from the buyers for the oil sold to them on credit. It is within the rights of a principal under Section 211 Indian Contract Act to restrict the period of credit to x be allowed to buyers and such a restriction is binding on the agent as it is lawful vide Section 211 Indian Contract Act.

It is not repugnant to the legal relationship of principal and agent to cast a responsibility on the agent for bad debts. That only makes the agent what is known in law as a 'Del Credere agent.' In Bowstead on agency a delcredere agent is defined in art.3 as an agent who guarantees to the principal the payment of moneys due on contracts between the agent and third persons. The distinction [illegible]

In the Court of the Special II Class Magistrate, Tumkur.

Dated this 23rd January 1928

Present Mr. S. Seetharamiah Esquire, B.A., B.L.,
First Class Magistrate.
C.C. No. 52/27-28

Complainant, accused.
Government, Vs. Lingappa

JUDGMENT.

This is a prosecution under Section 24(a) of the Mysore Forest Regulation. The case is that on the 22nd June 1927, fifty goats belonging to the accused were pastured by a servant of the accused in the Ambasandra State Forest in Gubbi Taluk. The Range Officer (Pw.1) who has instituted the prosecution states that he himself discovered the goats being grazed there and he is corroborated by one Huriyamma (P.W.2) of Ambasandra. Both of them have further exposed that the accused came up a couple of hours after the goats were seized, and admitting that all the fifty goats belonged to him agreed to compound the said offence. It is on account of his turning round later and refusing to pay the compensation fees demanded that he has been prosecuted. His explanation for taking up this attitude is that he learnt from the boy who was tending the goats that they were grazed in the District Jungle and not in the State Forest. He does not also now admit that all the fifty goats seized were his goats. But so far as the liability to punishment is concerned it is immaterial whether all or any some of them were his goats. He has also failed to prove as he now tries to make out that he had only twenty goats, the evidence of the Shanbhogue of his village whom he has examined for the purpose of being too vague and inconclusive as to the number of goats he owns on the material date is the 22nd June 1927. As regards his main defence that the goats were pastured in the District jungle and not in the State Forest, he has adduced no evidence whatever. There is no reason therefore to doubt either that the accused's goats were pastured in the State Forest or that they were fifty in number.

2. It is undisputed however that the accused did not himself graze the goats in the State Forest. And there is no evidence to raise the presumption that it was at his instance that his servant grazed them there. This presumption doesnot also neces-

necessarily arise from the mere fact that the goats were his and that the person who pastured them was his servant. The principal principle governing the Magistrate's liability in such circumstances is thus stated in xxx a case reported in 11 M.L.J. 16 (29 C 325) which case also the question for determination was similar, the owner of certain cattle having been prosecuted under Section 25 (d) of the Indian Forest Act VII of 1878 on account his servant grazing them in a reserved Forest.

"The general rule of law is that a master is not criminal-ly responsible for the acts of his servants unless he expressly command and personally co-operate in them. In criminal cases they must each answer for their own acts and stand or fall by their own behaviour. There is xx a general presumption that mens rea or criminal intention or a knowledge of the wrongfulness of the act or some blame worthy conditions of mind is an essential ingredient of any every offence. But there are exceptions to this general rule. By statute or by contractual under-taking there is some public duty legally bunding upon the matter for the breach of which a criminal liability is imposed upon him whether such breach is committed by him personally or by persons whom he chosed to employ in the discharge of that obligation, subject to this that the acts of the servants fall within the scope of their authority.. In the present instance there is nothing to show that it was either by the xxxxxxdis accused's directions or with his co-operation that his servant grazed the goats in the State Forest

There is no express provision in the Mysore Forest Regulation for holding the master responsible for such acts of his servants as there is for instance in Section 64 of the Mysore Excise Regulation. As this is not a case of breach of public duty cast upon the accused by any contractual - undertaking and he does not stand in the position for instance of a licensee under the Excise Regulation. On the principle set out above, therefore the accused cannot be held liable to punishment, for the contravention of Section 24 (a) of the Forest Regulation for which his servant is personally responsible. He is acquittanced on this ground under Section 245 (1) of Criminal Procedure Code.

In Open Court.

Sd/- K. Seetharamiah,
II Class Magistrate Court.
Tumkur.

---

"COPY"

District Forest Officer
Tumkur.

A. P. F. VI. G[illegible]

SUBJECT.....

.....

.....

Section Law

File No. 11-28

Serial No. 2

*Diary No. of letter replied to*.....

No. 953

General and Revenue Secretariat

( )

*the* *192*

To The Chief Conservator of Forests in mysore, Bangalore.

Date of issue 9/8/28

Signed by M' Nos

Sir,

With reference to your letter No: D3, 3197-27 dated 30-7-28 ~~from~~ forwarding, for ~~favour of~~ opinion, a copy of Tumkur District Forest officer's letter No. 1014 dated 1-6-1928 ~~relating~~ regarding the acquittal of the accused in a ~~the~~ Forest Case (No: ~~46/42 of~~ C.C. 52 of 1927-28) ~~(926-27) tried and disposed of~~ by the Special II Class magistrate, Tumkur, ~~in C.C. No 52 of 27-28,~~ I have the honour to state that

List of enclosures.....

Copied by .....

Examined by .....

*over*

WD0325—G.P.B.—30,000—26-5-27

that the case referred to ended
with died on account of the
Department prosecuting the owner
of the goats instead of his servant
who actually grazed them in the
Lake Forest, without even letting
in any evidence as to the responsibility
of the former apart from the fact
that he was the owner of the goats.
No legislation for the purpose of
securing Conviction in ~~Cases~~ such
Cases seems called for. The
Excise Regulation stands on a
different footing and the exceptional
Provision made in Section 64 for
the purposes of that Regulation
Cannot be regarded as furnishing
an analogy for amending the
Forest Regulation on the same lines

Thanking etc